

Exhibit B

New York Matrimonial Law and Practice

By
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Member, New York State Bar

Volume 1

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II. NEGOTIATING SEPARATION AGREEMENTS

§ 10:7 Preparing practitioner for marital negotiations

Negotiation of a separation agreement should be approached with the same high level of energy and determination as would be devoted to contested litigation. Just as it would be imprudent to approach the trial of a matrimonial action without first preparing for it, undertaking to negotiate a separation agreement without taking the time and expending the effort to prepare is likewise fraught with peril.

The practitioner's overall preparedness for the endeavor

¹¹Lottridge v. Lottridge, 73 Misc. 2d 614, 616, 342 N.Y.S.2d 251 (County Ct. 1973).

¹²Lottridge v. Lottridge, 73 Misc. 2d 614, 616, 342 N.Y.S.2d 251 (County Ct. 1973).

See also, Swift v. Swift, 260 A.D.2d 466, 688 N.Y.S.2d 211 (2d Dep't 1999) (where plaintiff moved pursuant to N.Y. Dom. Rel. Law §§ 244 and 245 to enforce terms of stipulation of settlement, which was incorporated but not merged in judgment of divorce, in view of defendant's acknowledgement that he did not comply with his financial obligations set forth in judgment until after motion for enforcement was served, and there was evidence that such failure was willful, lower court properly determined that plaintiff was entitled to an award of counsel fees pursuant to N.Y. Dom. Rel. Law § 237(c). See, Croce v. Croce, 236 A.D.2d 646, 653 N.Y.S.2d 188 (3d Dep't 1997); Vicinanzo v. Vicinanzo, 233 A.D.2d 715, 650 N.Y.S.2d 370 (3d Dep't 1996); Goldfarb v. Goldfarb, 175 A.D.2d 275, 572 N.Y.S.2d 917 (2d Dep't 1991).)

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begins at home, with him or herself. Apart from the issues which attend any given case, the practitioner should be thoroughly versed in the substantive law of equitable distribution. Attempting to negotiate a comprehensive opt-out agreement without such knowledge is blind folly.

The statute itself should be a familiar friend, one which counsel may discuss in detail from memory. Beyond the statute lies the evolving decisional law in this relatively new area of jurisprudence. Although the statute itself is relatively comprehensive and detailed, much of what is now known and daily applied in practice has come from the bench since enactment of the reform legislation.

It may be reasonably anticipated that the judicial determination of crucial equitable distribution issues will continue in the years ahead, possibly at an accelerated pace as more actions wind their way through the appellate courts. Keeping up-to-date with reported decisions through the advance sheets is, therefore, imperative.

Equally important to the practitioner is the ability to litigate the matrimonial dispute in the event negotiations reach an impasse. When the going gets tough, resort to litigation may be the only option. While it may not be necessary to ultimately go through a fully contested matrimonial trial, preliminary litigation may be essential to breaking the impasse.

Furthermore, any shortcomings in litigation skills will soon become known to the practitioner's potential adversaries and such weaknesses may well be exploited in the negotiating process. Thus, it is important to quickly acquire the skills of a litigator.

It is also suggested that the practitioner give thought to developing an overall approach to the resolution of matrimonial disputes which facilitates reasonable settlement but which spurns overreaching by meeting such efforts by effective resort to the courts.

Such a negotiation-litigation approach should serve several ends. It keeps the door open to continued good-faith negotiations irrespective of the stage of pending litigation. It allows bad-faith negotiating positions assumed by the adverse party to be immediately met by a hostile litigious response, whether by the making of an appropriate motion or simply by stepping up the pace toward trial.

This carrot and stick approach may also carry long-term

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benefits to the practitioner's future clients, in that once the local legal community is aware that bad-faith negotiation postures garner no gain, such untoward negotiating positions may be less frequently encountered. This allows both sides to get down to serious negotiations sooner and facilitates more expeditious and less expensive settlements.

§ 10:8 Preparing client for negotiations

Once the practitioner has become a polished student of equitable distribution and an ardent litigator, only one thing more is needed before counsel can hone his or her skills: a client with a marital problem. Fortunately for the practitioner, there is no shortage of such people in the community and, on any given day, counsel merely needs to step outside the office and grab anyone walking by. The chances are almost fifty-fifty that the accosted party will fit the bill.

Once the client has retained the practitioner to handle his or her matrimonial problem, hopefully under more auspicious circumstances than mentioned above, the possibility of resolving the matter by negotiating a reasonable separation agreement should be considered.¹

It is generally useful to explain to the client the many advantages which might be gained by attempting to negotiate such an agreement.

Mention should be made of the risk which always attends contested litigation and the relatively higher expense of proceedings in the courts. It should also be pointed out that even the most dedicated and compassionate judge usually has but a few hours of precious judicial time in which to grasp the nuances of a relationship which has often developed over many years.

The point should also be made that obligations voluntarily assumed by agreement are more apt to be honored by the other party, thereby sparing the client endless trips to the courthouse in search of enforcement.

A general explanation of the law of separation agreements should also be given to the client, explaining that they can not only serve to settle the various financial and familial is-

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¹For further discussion of the preliminary aspects of dealing with matrimonial clients, see Chapter 12.

SEPARATION AGREEMENTS

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sues but also may provide a basis for a subsequent no-fault conversion divorce.

The need for the client to maintain an open mind and flexible attitude toward the negotiating process should be emphasized. Any frozen precepts on the client's part can only render the process more difficult and, hence, more protracted and costly.

Further, if the client is generally receptive to the negotiated approach, the client's role in the process should be carefully explained. The practitioner should emphasize that any final decision as to the acceptability of a given settlement proposal will be that of the client. He or she should be told that the practitioner will give advice and make recommendations but that there will be no effort to shove anything down the client's throat.

It should also be explained, with equal force, that the manner in which the negotiations are handled, the bargaining positions assumed at the various stages of the negotiations, together with any conjunctive legal pressures brought to bear, are within the exclusive professional domain of counsel.

The client should be cautioned against engaging in direct negotiations with his or her spouse. Such contact can often undermine counsel's position with the opposing lawyer and often result in inadvertent concessions by the client. Once the client has given something away, it is often irretrievable.

Communication with the client is critical at every stage of the negotiations and courtesy copies of correspondence between the attorneys should be liberally used to keep the client informed.

At the initial stages, the practitioner should elicit from the client what issues are most important to him or her. The client's understanding of which issues may be of principal concern to the other party should also be drawn out so that the practitioner will have a clear idea of where the dispute will likely focus.

While it will frequently be necessary to reinforce the advice and instructions given to the client as the negotiations go forward, devoting sufficient time and energy to the task at the very early stages of representation should reap future rewards in the form of a more harmonious attorney-client relationship.

§ 10:9 Obtaining financial information

The need for full financial disclosure by both parties to a

LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS

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VOLUME 1

Alexander Lindey
Louis I. Parley

Updated by Kathryn Kirkland, J.D., CFLS

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MATTHEW BENDER

30-3**ASSETS IN GENERAL****§ 30.02****PART A. INTRODUCTION****§ 30.01 Scope of Chapter**

This chapter contains general forms for use in a separation or marital settlement agreement to set forth a division of personal property between the spouses. Part A includes drafting considerations. Part B sets forth the forms, and Part C discusses the general rules underlying a division of assets, as well as some of the specific issues related to personal property, both tangible and intangible.

For forms and discussion concerning the division of specific assets, see Chapters 31 (personal injury awards, including worker's compensation and disability income), 32 (professional degrees, licenses, and practices), 33 (closely-held corporations); 34 (pensions and related assets), and 35 (real property). Family and interparty debts are covered in Chapter 40.

Related tax forms and discussion are found in Chapter 45. In addition, forms and related legal issues regarding the problems arising from a party's postseparation or postdecree bankruptcy are presented in Chapter 41.

§ 30.02 Drafting Considerations

1. In many cases, property division arrangements will be the most significant aspect of a case, not only because of the extent and value of the property, but also because the division will have more effect on the parties' financial future than alimony or child support orders. Accordingly, there has been, for example, increased litigation over various types of intangible interests that may constitute property, such as stock options (see §§ 30.28–30.30), and advanced degrees and professional licenses (see Ch. 32).
2. While a complete list of the property interests of the parties is required for a full and fair division, a professional assessment of property values is of nearly equal importance. A party's belief as to the value of the property does not suffice. In an ever-changing economic environment, relying on uninformed guesses as to property value can be as problematic as not knowing what property is available for distribution. Although a professional appraisal of property values may increase a client's expenses, the increased accuracy justifies the cost of the appraisal because the appraisal significantly reduces the controversy over value.
3. Property division provisions should not only include the distribution of property between the parties, but also involve the distribution of family and personal debts. In order to determine the fairness of the division, it is essential to be aware of the net value of a party's assets. Approaching

debt obligations as mere expenses to be paid out of income is not an accurate reflection of the total marital estate. The "net worth" of the marital estate can only be determined by including marital debts. It is also inequitable not to distribute debts between the parties at the same time and on the same basis as assets are distributed.

4. The assets to be divided are not necessarily restricted to those existing at the time of the separation, and the parties may create new assets to enable them to achieve a fair division. For example, the creation of a trust fund or the purchase of a life insurance policy may provide new resources that satisfy a party's needs without requiring the other party to surrender substantial assets in order to achieve a division.
5. It is also important to focus on the present and future tax consequences of a property division. For example, while the transfer of property from one spouse to another may not be a taxable transaction under the Internal Revenue Code, the taxes imposed on the property recipient if there is a sale to a third party may be significant. Awareness of the imbedded tax potential may affect the negotiations for division of assets and/or perception of a "fair" division. Courts generally do not take into account the possibility of tax consequences of the future sale of an asset because the effects would be too speculative.
6. It is often as important to address the process and time periods relevant to the division as it is to identify the property division itself. The use of vague terms such as "contemporaneously" or "promptly" or "forthwith" can cause more delay than desired. Similarly, identifying which party is to deliver certain items to the other can avoid delays in transfers and disputes.
7. It is not uncommon for the division of household effects to be left for the end of the negotiations. This is usually done on the theory that they are not a significant issue. However, the emotions attached to such items can make this a very difficult and anger-inducing element, threatening the rest of the agreement. In addition, the difference between current value of existing household items, such as a sofa, bed or television, and the cost to replace such items may cause one or the other spouse to feel he or she did not get a fair deal. One possible way to address the problem is to have each spouse choose one item alternately.

§§ 30.03–30.09 [Reserved]

NEW YORK MATRIMONIAL PRACTICE

SECOND EDITION

By
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Member of the New York Bar



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Part II

DATA PACKET

Chapter 14

Matrimonial Practice Data Packet

- § 14:1 Data packet cover sheet
- § 14:2 Attorney information sheet
- § 14:3 Living expense sheet

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§ 14:1 Data packet cover sheet

Matrimonial Practice Data Packet for Client _____

<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>0.10 Attorney in charge</td></tr> <tr><td>0.11 Assistant, if any</td></tr> <tr><td>Court</td></tr> <tr><td>0.30 County</td></tr> <tr><td>0.31 Judge</td></tr> <tr><td>0.32 Court Address</td></tr> <tr><td>0.33 Court Telephone</td></tr> <tr><td>0.34 Court FAX</td></tr> <tr><td>Opposing Counsel</td></tr> <tr><td>0.40 Name</td></tr> <tr><td>0.41 Opposing Counsel's Firm</td></tr> <tr><td>0.42 - Address</td></tr> <tr><td>0.43 - Phone Number</td></tr> </table>	0.10 Attorney in charge	0.11 Assistant, if any	Court	0.30 County	0.31 Judge	0.32 Court Address	0.33 Court Telephone	0.34 Court FAX	Opposing Counsel	0.40 Name	0.41 Opposing Counsel's Firm	0.42 - Address	0.43 - Phone Number	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>0.01 Firm File No.</td></tr> <tr><td>0.02 Court's Index No.</td></tr> <tr><td>0.03 Opposing Counsel's File No.</td></tr> <tr><td>0.04 Court Calendar No.</td></tr> <tr><td>Fee Arrangement</td></tr> <tr><td>0.20 Retainer</td></tr> <tr><td>0.21 Additional terms</td></tr> <tr><td>0.22 Date</td></tr> <tr><td>Dates</td></tr> <tr><td>0.60 Date of Separation Agreement</td></tr> <tr><td>0.61 Date of Service of Summons</td></tr> <tr><td>0.62 Date of Notice of Appearance</td></tr> <tr><td>0.63 Date of Service of Complaint</td></tr> <tr><td>0.64 Date of Service of Answer</td></tr> <tr><td>0.55 Date of Service of Reply</td></tr> <tr><td>0.66 Date of Request for Judicial Intervention</td></tr> <tr><td>0.67 Date of Notice of Issue</td></tr> <tr><td>0.67a Date of certification</td></tr> <tr><td>0.58 Date and time of inquest or trial</td></tr> <tr><td>0.59 Date judgment was granted</td></tr> <tr><td>0.60 Date judgment was entered</td></tr> <tr><td>0.61 Date judgment was served</td></tr> <tr><td>0.62 Date notice of appeal was filed</td></tr> <tr><td>0.63 Action is for</td></tr> <tr><td><input type="checkbox"/> Annulment or Declaration of nullity</td></tr> <tr><td><input type="checkbox"/> Separation</td></tr> <tr><td><input type="checkbox"/> Divorce</td></tr> <tr><td><input type="checkbox"/> Other _____</td></tr> </table>	0.01 Firm File No.	0.02 Court's Index No.	0.03 Opposing Counsel's File No.	0.04 Court Calendar No.	Fee Arrangement	0.20 Retainer	0.21 Additional terms	0.22 Date	Dates	0.60 Date of Separation Agreement	0.61 Date of Service of Summons	0.62 Date of Notice of Appearance	0.63 Date of Service of Complaint	0.64 Date of Service of Answer	0.55 Date of Service of Reply	0.66 Date of Request for Judicial Intervention	0.67 Date of Notice of Issue	0.67a Date of certification	0.58 Date and time of inquest or trial	0.59 Date judgment was granted	0.60 Date judgment was entered	0.61 Date judgment was served	0.62 Date notice of appeal was filed	0.63 Action is for	<input type="checkbox"/> Annulment or Declaration of nullity	<input type="checkbox"/> Separation	<input type="checkbox"/> Divorce	<input type="checkbox"/> Other _____
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<p>Contents of Packet</p> <p>Client Information 1.00-1.10 Spouse Information 2.00-2.10 Marriage Information 3.00-3.06 Children of Marriage 4.00-4.31 Prior Marriage of Client 5.00-5.09 Prior Marriage of Spouse 6.00-6.09 Pending Litigation 7.00-7.07 Income of Spouse 8.00-8.25</p>	<p>Non-joint Assets of Spouse 9.00-9.102 Income of Clients 10.00-10.25 Non-joint Assets of Client 11.00-11.68 Assets Held Jointly 12.00-12.70 Liabilities of Parties 13.00-13.04 The Marital Problem 15.00-15.05 Desire of Client 16.00-16.01 Advice Given 17.00</p>
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§ 14:2

NEW YORK MATRIMONIAL PRACTICE

§ 14:2 Attorney information sheet

Date of conference _____ Place of conference _____
Time started _____ Time ended _____

Client Information

1.00 Full Name _____
 1.02(1) Legal Surname _____
 1.02 Residence _____
 1.04 Mailing Address _____
 1.05 Date of Birth _____
 1.07(1) Place of Birth _____
 1.08(1) Education (highest grade) _____
 1.10 County of residence _____

1.01 Maiden Name _____
 1.03 Telephone Number(s) _____
 1.05 Business Telephone _____
 1.07 Age _____
 1.09 Social Security Number _____

Spouse Information

2.00 Full Name _____
 2.02 Residence _____
 2.04 Mailing Address _____
 2.05 Date of Birth _____
 2.07(1) Place of Birth _____
 2.08(1) Education (highest grade) _____
 2.10 County of Residence _____

2.01 Maiden Name _____
 2.03 Telephone Number(s) _____
 2.05 Business Telephone _____
 2.07 Age _____
 2.09 Social Security Number _____

Marriage Information

3.00 Date of marriage _____
 3.02 Date of separation _____
 3.04 Prior separation _____
 3.06 Is wife pregnant? _____
 3.07 Address of marital residence, if owned by parties _____
 3.08 Title to marital residence held by _____

3.01 Place married (including county) _____
 3.03 Who left? Client _____ Spouse _____
 3.05 Who left? Client _____ Spouse _____

Prenuptial Agreement

3.10 Date of agreement _____
 3.11 Attorney for wife _____
 3.12 Attorney for husband _____
 3.13 Financial disclosure by wife (yes/no) _____
 3.14 Financial disclosure by husband (yes/no) _____
 3.15 Properly acknowledged (yes/no) _____
 3.16 Time between signing and marriage _____

Children of Marriage

4.00 Name _____ 4.01 Adopted? _____
 4.02 Birthdate _____ 4.03 Age _____ 4.04 Birthplace _____
 4.05 School name _____ 4.06 Grade _____
 4.07 If employed: Employer name _____
 Employer address _____
 Days or hours per week _____
 Compensation _____

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4.08 Name _____	4.09 Adopted? _____	4.10 Birthdate _____	4.11 Age _____	4.12 Birthplace _____
4.13 School name _____	4.14 Grade _____			
4.15 If employed: Employer name _____ Employer address _____				
Days or hours per week _____ Compensation _____				
4.16 Name _____	4.17 Adopted? _____	4.18 Birthdate _____	4.19 Age _____	4.20 Birthplace _____
4.21 School name _____	4.22 Grade _____			
4.23 If employed: Employer name _____ Employer address _____				
Days or hours per week _____ Compensation _____				
4.24 Name _____	4.25 Adopted? _____	4.26 Birthdate _____	4.27 Age _____	4.28 Birthplace _____
4.29 School name _____	4.30 Grade _____			
4.31 If employed: Employer name _____ Employer address _____				
Days or hours per week _____ Compensation _____				
Prior Marriage(s) of Client (number) _____				
5.00 Date of marriage _____	5.01 Place married _____			
5.03 Date of termination _____	5.04 Name of former spouse _____			
5.05 Children (number) _____ Name _____ Resides with _____ at _____	Birthdate _____ Age _____			
Name _____ Resides with _____ at _____	Birthdate _____ Age _____			
Name _____ Resides with _____ at _____	Birthdate _____ Age _____			
5.06 Manner of termination _____				
5.07 If by death, date _____ place _____				
5.08 If by court order (obtain copy): Name of court _____ Location of court _____ Date of order _____ Ground for dissolution _____				

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5.09 If agreement (obtain copy):

Date _____
 Attorney for client - name _____
 address _____

Attorney for spouse - name _____
 address _____

Prior Marriage(s) of Spouse (number) _____

6.00 Date of marriage _____ 6.01 Place married _____

6.03 Date of termination _____ 6.04 Name of spouse _____

6.05 Children (number)

Name _____ Birthdate _____ Age _____
 Resides with _____ at _____

Name _____ Birthdate _____ Age _____
 Resides with _____ at _____

Name _____ Birthdate _____ Age _____
 Resides with _____ at _____

6.06 Manner of termination _____

6.07 If by death, date _____ : place _____

6.08 If by court order (obtain copy):

Name of court _____
 Location of court _____
 Date of order _____

Ground for dissolution _____

6.09 If agreement (obtain copy):

Date _____
 Attorney for client - name _____
 address _____

Attorney for spouse - name _____
 address _____

Pending Litigation (obtain copies of all papers)

7.00 Court _____ 7.01 Location of court _____

7.02 Type of litigation _____

7.03 Client is: plaintiff (petitioner) _____
 defendant (respondent) _____

7.04 Status of litigation _____

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7.05 Name of client's attorney	_____
Address	_____
Telephone number	_____
7.06 Name of spouse's attorney	_____
Address	_____
Telephone number	_____
7.07 Reason for client's consultation	_____

Income of Spouse

A. Primary Employment

8.00 Employer _____

8.01 Place of employment _____

8.02 Position or title held by spouse _____

8.03 Type of work performed _____

8.04 Years with employer _____

8.05 Compensation

(a) Salary or wages _____

Gross _____; net _____

(b) Bonus _____

(c) Employer's contribution to:

(1) Pension plan _____

(2) Profit-sharing plan _____

(3) Savings plan _____

(4) Other _____

(d) Expense allowances _____

(e) Automobiles furnished by employer _____

(1) Year, make and model _____

(2) Auto expenses paid by employer _____

(i) lease _____

(ii) gasoline and oil _____

(iii) maintenance _____

(iv) insurance _____

(v) other _____

(3) Charges to employee for use _____

8.06 If self-employed:

(a) Hours (if part-time) _____

(b) Partners or other principals _____

Name _____

Address _____

Name _____

Address _____

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B. Other Employment

8.07 Employer _____
 8.08 Place of employment _____

8.09 Position or title held by spouse _____

8.10 Type of work performed _____

8.11 Years with employer _____

8.12 Compensation

(a) Salary or wages

Gross _____; _____ net

(b) Bonus

(c) Employer's contribution to:

(1) Pension plan

(2) Profit-sharing plan

(3) Savings plan

(4) Other

(d) Expense allowances

(e) Automobiles furnished by employer

(1) Year, make and model _____

(2) Auto expenses paid by employer

(i) lease

(ii) gasoline and oil

(iii) maintenance

(iv) insurance

(v) other

(3) Charges to employee for use

C. Prior Employment (if different during past five years from information given above)

8.13 Employer _____

8.14 Place of employment _____

8.15 Position or title held by spouse _____

8.16 Type of work performed _____

8.17 Years with employer _____

8.18 Annual compensation _____

8.19 Value of employee benefits _____

D. Other Income

8.20 Investments

Explain _____

Annual income

8.21 Earnings on bank accounts (annual)

8.22 Dividend income (annual)

8.23 Income from trusts (annual)

8.24 Other _____

DATA PACKET

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E. Health of Spouse

8.25 Comments: _____

Assets of Spouse (Not Joint with client)

A. Checking Accounts

9.00 Name of bank _____	9.01 Average Balance _____
9.02 Account number _____	
9.03 Title of account _____	
9.04 Name of bank _____	9.05 Average Balance _____
9.06 Address of bank _____	
9.07 Account number _____	

B. Savings Accounts and Certificates of Deposit

9.08 Name of Bank _____	9.09 Balance _____
9.10 Address of Bank _____	
9.11 Account Number _____	
9.12 Title of Account _____	
9.13 Name of Bank _____	9.14 Balance _____
9.15 Address of Bank _____	
9.16 Account Number _____	
9.17 Title of Account _____	
9.18 Name of Bank _____	9.19 Balance _____
9.20 Address of Bank _____	
9.21 Account Number _____	
9.22 Title of Account _____	

C. Securities

9.23 Stocks Total value \$ _____

Describe each stock:

(1) Name of corporation _____
(2) Shares held _____
(3) Current price per share _____
(4) Cost per share when acquired _____
(5) Loans against shares or margin indebtedness _____
(6) Location of stock certificates _____

9.24 Bonds (include U.S. Savings Bonds) Total value \$ _____

Describe each bond:

(1) Name of issuer _____
(2) Face value _____
(3) Current value _____
(4) Due date _____
(5) Cost _____
(6) Amount and dates of interest payments _____

(7) Loans against bonds or margin indebtedness _____
(8) Location of bonds _____

9.25 Other securities (e.g. debentures, options, warrants, futures, etc.) Total value \$ _____

Describe type, loans, location of each

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NEW YORK MATRIMONIAL PRACTICE

9.26 Stockbroker name _____
 address _____
 account number _____ Type of account _____
 account number _____ Type of account _____

D. Business Assets

9.27 Name of business _____
 9.28 Type of business _____
 9.29 Percentage _____
 9.30 Value of spouse's interest \$ _____
 9.31 Name of business _____
 9.32 Type of business _____
 9.33 Percentage _____
 9.34 Value of spouse's interest \$ _____

E. Other Assets

9.35 Description _____	9.36 Value \$ _____
9.37 Description _____	9.38 Value \$ _____
9.39 Description _____	9.40 Value \$ _____

F. Life Insurance

9.41 Name of company _____	9.42 Face Amount \$ _____
9.43 Loans against policy _____	
9.44 Type of policy _____	9.45 Beneficiary _____
9.46 Owner of policy _____	9.47 Location of policy _____
9.48 Name of company _____	9.49 Face Amount \$ _____
9.50 Loans against policy _____	
9.51 Type of policy _____	9.52 Beneficiary _____
9.53 Owner of policy _____	9.54 Location of policy _____
9.55 Name of company _____	9.56 Face Amount \$ _____
9.57 Loans against policy _____	
9.58 Type of policy _____	9.59 Beneficiary _____
9.60 Owner of policy _____	9.61 Location of policy _____

G. Pension or Retirement Plans

9.62 Type of plan (Keogh, IRA, union, employer) _____	
9.63 Total sum in plan _____	
9.64 Total invested by spouse _____	
9.65 Total invested by employer _____	
9.66 Total vested _____	
9.67 Last annual payment into plan _____	
9.68 Value on retirement age _____	
9.69 Payments on retirement age _____	
9.70 Earliest retirement age _____	
9.71 Normal retirement age _____	
9.72 Type of investments by fund _____	
9.73 Type of plan (Keogh, IRA, union, employer) _____	

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9.74 Total sum in plan _____
 9.75 Total invested by spouse _____
 9.76 Total invested by employer _____
 9.77 Total vested _____
 9.78 Last annual payment into plan _____
 9.79 Value on retirement age _____
 9.80 Payments on retirement age _____
 9.81 Earliest retirement age _____
 9.82 Normal retirement age _____
 9.83 Type of investments by fund _____

H. Other Personal Property

9.84 - Boat

(a) Length, make and type _____
 (b) Value \$ _____
 (c) Loans against boat _____
 (d) Loan payments per month \$ _____
 (e) Loan payments made to _____
 (f) Location of boat _____

9.85 - Airplane

(a) Make and type _____
 (b) Value \$ _____
 (c) Loans against airplane _____
 (d) Loan payments per month \$ _____
 (e) Loan payments made to _____
 (f) Location of airplane _____

9.86 - Collections (e.g. guns, stamps, coins, antiques, works of art)

Description _____ Value \$ _____
 Description _____ Value \$ _____
 Description _____ Value \$ _____

I. Real Property (residence, business, vacation)

9.87 Address _____

9.88 County _____

9.89 Description (including county and town) _____

9.90 Market Value \$ _____

9.91 Mortgagors _____

9.92 Mortgage payments \$ _____ per month

9.93 Other liens: amount \$ _____
to whom owed _____
how payable _____

9.94 Taxes \$ _____

9.95 Rents or other income \$ \$ _____

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J. Other Assets

9.96 Description _____	9.97 Value \$ _____
9.98 Description _____	9.99 Value \$ _____
9.100 Description _____	9.101 Value \$ _____
9.102 Description _____	9.103 Value \$ _____
9.104 Description _____	9.105 Value \$ _____

Income of Client

A. Primary Employment

10.00 Employer _____
10.01 Place of employment _____

10.02 Position or title _____

10.03 Type of work performed _____

10.04 Years with employer _____

10.05 Compensation

(a) Salary or wages	\$ _____
---------------------	----------

(b) Gross \$ _____; net \$ _____	\$ _____
----------------------------------	----------

(c) Bonus	\$ _____
-----------	----------

(c) Employer's contribution to:	\$ _____
---------------------------------	----------

(1) Pension plan	\$ _____
------------------	----------

(2) Profit-sharing plan	\$ _____
-------------------------	----------

(3) Savings plan	\$ _____
------------------	----------

(4) Other	\$ _____
-----------	----------

(d) Expense allowances	\$ _____
------------------------	----------

(e) Automobiles furnished by employer	\$ _____
---------------------------------------	----------

(1) Year, make and model _____

(2) Auto expenses paid by employer	\$ _____
------------------------------------	----------

(i) lease	\$ _____
-----------	----------

(ii) gasoline and oil	\$ _____
-----------------------	----------

(iii) maintenance	\$ _____
-------------------	----------

(iv) insurance	\$ _____
----------------	----------

(v) other	\$ _____
-----------	----------

(3) Charges to employee for use	\$ _____
---------------------------------	----------

10.06 If self-employed:	\$ _____
-------------------------	----------

(a) Hours (if part-time) _____

(b) Partners or other principals

Name _____

Address _____

Name _____

Address _____

DATA PACKET

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B. Other Employment

10.07 Employer _____

10.08 Place of employment _____

10.09 Position or title _____

10.10 Type of work performed _____

10.11 Years with employer _____

10.12 Compensation

(a) Salary or wages \$ _____

Gross \$ _____; net \$ _____

(b) Bonus _____

(c) Employer's contribution to:

(1) Pension plan _____

(2) Profit-sharing plan _____

(3) Savings plan _____

(4) Other _____

(d) Expense allowances _____

(e) Automobiles furnished by employer

(1) Year, make and model _____

(2) Auto expenses paid by employer

(i) lease _____

(ii) gasoline and oil _____

(iii) maintenance _____

(iv) insurance _____

(v) other _____

C. Prior Employment (if different during past five years from information given above)

10.13 Employer _____

10.14 Place of employment _____

10.15 Position or title held by client _____

10.16 Type of work performed _____

10.17 Years with employer _____

10.18 Annual compensation _____

10.19 Value of employee benefits _____

D. Other Income

10.20 Investments _____

Explain _____

10.21 Earnings on bank accounts (annual) _____

10.22 Dividend income (annual) _____

10.23 Income from trusts (annual) _____

10.24 Other _____

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NEW YORK MATRIMONIAL PRACTICE

E. Health of Client

10.25 Comments: _____

Assets of Client (Not Joint with spouse)

A. Checking accounts

11.00 Name of bank _____	11.01 Average Balance _____
11.02 Account number _____	
11.03 Title of account _____	
11.04 Name of bank _____	11.05 Average Balance _____
11.06 Address of bank _____	
11.07 Account number _____	

B. Savings Accounts and Certificates of Deposit

11.08 Name of Bank _____	11.09 Balance _____
11.10 Address of Bank _____	
11.11 Account Number _____	
11.12 Title of Account _____	
11.13 Name of Bank _____	11.14 Balance _____
11.15 Address of Bank _____	
11.16 Account Number _____	
11.17 Title of Account _____	
11.18 Name of Bank _____	11.19 Balance _____
11.20 Address of Bank _____	
11.21 Account Number _____	
11.22 Title of Account _____	

C. Securities

11.23 Stocks

Total value \$ _____

Describe each stock:

- (1) Name of corporation _____
- (2) Shares held _____
- (3) Current price per share _____
- (4) Cost per share when acquired _____
- (5) Loans against shares or margin indebtedness _____
- (6) Location of stock certificates _____

11.24 Bonds (include U.S. Savings Bonds)

Total value \$ _____

Describe each bond:

- (1) Name of issuer _____
- (2) Face Value _____ \$ _____
- (3) Current value _____ \$ _____
- (4) Due date _____
- (5) Cost _____ \$ _____
- (6) Amount and dates of interest payments _____
- (7) Loans against bonds or margin indebtedness _____
- (8) Location of bonds _____

11.25 Other securities (e.g., debentures, options, warrants, futures, etc.)

Total value \$ _____

Describe type, loans, location of each

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11.26 Stockbroker name _____
 address _____
 account number _____ Type of account _____
 account number _____ Type of account _____

D. Business Assets

11.27 Name of business _____
 11.28 Type of business _____
 11.29 Percentage _____
 11.30 Value of client's interest \$ _____
 11.31 Name of business _____
 11.32 Type of business _____
 11.33 Percentage _____
 11.34 Value of client's interest \$ _____

E. Other Assets

11.35 Description _____ 11.36 Value \$ _____
 11.37 Description _____ 11.38 Value \$ _____
 11.39 Description _____ 11.40 Value \$ _____

F. Life Insurance

11.41 Name of company _____ 11.42 Face Amount \$ _____
 11.43 Loans against policy _____
 11.44 Type of policy _____ 11.45 Beneficiary _____
 11.46 Owner of policy _____ 11.47 Location of policy _____
 11.48 Name of company _____ 11.49 Face Amount \$ _____
 11.50 Loans against policy _____
 11.51 Type of policy _____ 11.52 Beneficiary _____
 11.53 Owner of policy _____ 11.54 Location of policy _____
 11.55 Name of company _____ 11.56 Face Amount \$ _____
 11.57 Loans against policy _____
 11.58 Type of policy _____ 11.59 Beneficiary _____
 11.60 Owner of policy _____ 11.61 Location of policy _____

G. Pension or Retirement Plans

11.62 Type of plan (Keogh, IRA, union, employer) _____
 11.63 Total sum in plan _____
 11.64 Total invested by spouse _____
 11.65 Total invested by employer _____
 11.66 Total vested _____
 11.67 Lost annual payment into plan _____
 11.68 Value on retirement age _____
 11.69 Payments on retirement age _____
 11.70 Earliest retirement age _____
 11.71 Normal retirement age _____
 11.72 Type of investments by fund _____

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NEW YORK MATRIMONIAL PRACTICE

H. Other Personal Property

11.73 Boat

(a) Length, make and type _____
 (b) Value _____ \$ _____
 (c) Loans against boat _____
 (d) Loan payments per month _____ \$ _____
 (e) Loan payments made to _____
 (f) Location of boat _____

11.74 Airplane

(a) Make and type _____
 (b) Value _____ \$ _____
 (c) Loans against airplane _____
 (d) Loan payments per month _____ \$ _____
 (e) Loan payments made to _____
 (f) Location of airplane _____

11.75 Collections (e.g., guns, stamps, coins, antiques, works of art)

Description _____	Value \$ _____
Description _____	Value \$ _____
Description _____	Value \$ _____

I. Real Property (residence, business, vacation)

11.76 Description _____

11.77 Market value _____ \$ _____

11.78 Mortgagee _____

11.79 Mortgage payments \$ _____ per month

Assets Held Jointly With Spouse

A. Checking accounts

12.00 Name of bank _____	12.01 Average balance _____
12.02 Account number _____	
12.03 Title of account _____	
12.04 Name of bank _____	12.05 Average balance _____
12.06 Address of bank _____	
12.07 Account number _____	

B. Savings Accounts and Certificates of Deposit

12.08 Name of bank _____	12.09 Balance _____
12.10 Address of bank _____	
12.11 Account number _____	
12.12 Title of account _____	
12.13 Name of bank _____	12.14 Balance _____
12.15 Address of bank _____	
12.16 Account number _____	
12.17 Title of account _____	
12.18 Name of bank _____	12.19 Balance _____
12.20 Address of bank _____	
12.21 Account number _____	
12.22 Title of account _____	

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§ 14:2

C. Securities

12.23 Stocks

Describe each stock: Total value \$ _____

(1) Name of Corporation _____
 (2) Shares held _____
 (3) Current price per share _____
 (4) Cost per share when acquired _____
 (5) Loans against shares or margin indebtedness _____
 (6) Location of stock certificates _____

12.24 Bonds (include U.S. Savings Bonds)

Total value \$ _____

Describe each bond:
 (1) Name of issuer _____
 (2) Face value _____ \$ _____
 (3) Current value _____ \$ _____
 (4) Due Date _____
 (5) Cost _____ \$ _____
 (6) Amount and dates of interest payments _____
 (7) Loans against bonds or margin indebtedness _____

(8) Location of bonds _____

12.25 Other securities (e.g., debentures, options, warrants, futures, etc.)

Total value \$ _____

Describe type, loans, location of each

12.26 Stockbroker name

address _____
 account number _____ Type of account _____
 account number _____ Type of account _____

D. Business Assets

12.27 Name of business

12.28 Type of business

12.29 Percentage

12.30 Value of client's interest

\$ _____

12.31 Name of business

12.32 Type of business

12.33 Percentage

12.34 Value of client's interest

\$ _____

E. Other Assets

12.35 Description _____ 12.36 Value \$ _____

12.37 Description _____ 12.38 Value \$ _____

12.39 Description _____ 12.40 Value \$ _____

§ 14:2

NEW YORK MATRIMONIAL PRACTICE

F. Life Insurance

12.41 Name of company _____	12.42 Face Amount \$ _____
12.43 Loans against policy _____	
12.44 Type of policy _____	12.45 Beneficiary _____
12.46 Owner of policy _____	12.47 Location of policy _____
12.48 Name of company _____	12.49 Face Amount \$ _____
12.50 Loans against policy _____	
12.51 Type of policy _____	12.52 Beneficiary _____
12.53 Owner of policy _____	12.54 Location of policy _____
12.55 Name of company _____	12.56 Face Amount \$ _____
12.57 Loans against policy _____	
12.58 Type of policy _____	12.59 Beneficiary _____
12.60 Owner of policy _____	12.61 Location of policy _____

G. Other personal property

12.62 - Boat

(a) Length, make and type _____	
(b) Value _____	\$ _____
(c) Loans against boat _____	
(d) Loan payments per month _____	\$ _____
(e) Loan payments made to _____	
(f) Location of boat _____	

12.63 - Airplane

(a) Make and type _____	
(b) Value _____	\$ _____
(c) Loans against airplane _____	
(d) Loan payments per month _____	\$ _____
(e) Loan payments made to _____	
(f) Location of airplane _____	

12.64 - Collections (e.g., guns, stamps, coins, antiques, works of art)

Description _____	Value \$ _____
Description _____	Value \$ _____
Description _____	Value \$ _____

H. Real Property (residence, business, vacation)

12.65 Description _____	
12.66 Market value _____	\$ _____
12.67 Mortgagee _____	
12.68 Mortgage payments \$ _____ per month	

I. Other Assets

12.69 _____	2.70
-------------	------

DATA PACKET

§ 14:2

Liabilities of the Parties

13.00 Creditor _____	Purpose of debt _____
Amount of principal owing _____	Monthly payments _____
Arrears of payments _____	
Obligation of: _____ client _____ spouse _____ joint	
13.01 Creditor _____	Purpose of debt _____
Amount of principal owing _____	Monthly payments _____
Arrears of payments _____	
Obligation of: _____ client _____ spouse _____ joint	
13.02 Creditor _____	Purpose of debt _____
Amount of principal owing _____	Monthly payments _____
Arrears of payments _____	
Obligation of: _____ client _____ spouse _____ joint	
13.03 Creditor _____	Purpose of debt _____
Amount of principal owing _____	Monthly payments _____
Arrears of payments _____	
Obligation of: _____ client _____ spouse _____ joint	
13.04 Creditor _____	Purpose of debt _____
Amount of principal owing _____	Monthly payments _____
Arrears of payments _____	
Obligation of: _____ client _____ spouse _____ joint	

Method of Payment of Family Expenses

14.00 Client pays: _____ _____ _____	_____ _____ _____
14.01 Spouse pays: _____ _____ _____	_____ _____ _____
14.02 Client's allowance for expenses: _____ _____ _____	_____ _____ _____
14.03 Spouse's allowance for expenses: _____ _____ _____	_____ _____ _____

The Marital Problem

15.00 Elements of cruelty (briefly list illustrative instances and dates)

(1) Physical violence _____ _____ _____	_____
(2) Emotional upset _____ _____ _____	_____

§ 14:2

NEW YORK MATRIMONIAL PRACTICE

15.01 Abandonment _____
 (1) When _____
 (2) Circumstances _____

 (3) Prior abandonments _____

15.02 Adultery of spouse
 (1) When _____
 (2) Where _____
 (3) With whom _____
 (4) Evidence _____

15.03 Non-support (describe details) _____

15.04 Sexual problems (describe) _____

15.05 Other problems (describe) _____

15.06 Grounds elected _____
 15.07 Formal proof of grounds _____

Desire of Client

16.00 Result sought:

Reconciliation _____
 Separation Decree _____
 Support Only _____

Separation Agreement _____

Divorce _____

16.01 Other relief sought:

Alimony _____
 Child support _____
 Medical insurance (including dental) _____
 Medical expenses (including dental) _____
 Psychiatric expense _____
 Camp _____
 Nursery school _____
 Private school _____
 College _____
 Life insurance _____
 Marital residence _____
 Other property _____
 Share of spouse's assets (describe) _____

Automobile _____
 Provision in spouse's will for client or children _____
 Counsel fees and expenses _____
 Other _____

DATA PACKET

§ 14:2

Attorney Fee

17.00 Retainer _____

17.01 Fee arrangement (flat rate, time rate, combination, minimum, maximum) _____

17.02 Disbursements: included _____ extra _____

17.03 Retainer letter signed: yes _____ no _____

17.04 Other arrangements: _____

Advice Given

18.00 _____

§ 14:3

NEW YORK MATRIMONIAL PRACTICE

§ 14:3 Living expense sheet

For _____
(Designate: husband, wife,
children or any combination)

	Per Week	Per Month	Per Year
a. Housing expenses			
1. Rent			
2. Mortgage payment			
3. Property Taxes (if not included in mortgage payment)			
4. Appliance and house service contracts			
5. House repairs			
6. Gardening expense			
7. Exterminator			
8. Fuel oil			
9. Gas and electric			
10. Water			
11. Sewer			
12. Garbage collection			
13. Telephone			
14. Cable television			
15. Homeowner's Association			
16. Tips to doormen, mailmen, etc.			
17. Snow removal			
18. House insurance			
19. Household help			
b. Food (including meat, milk, etc.)			
c. Cleaning supplies and household items			
d. Laundry and dry cleaning			
e. Clothing			
1. clothing for self			
2. clothing for children			
3. clothing for spouse			
f. Medical expenses (not covered by insurance)			
1. Doctors - self			
spouse			
children			
2. Dentists - self			
spouse			
children			
3. Hospital			
4. Psychotherapy (for whom?)			
5. Medicine (drugs)			
6. Vitamins			
7. Medical specialists			
8. Orthodontia			
9. Allergy expense			
10. Other			

DATA PACKET

§ 14:3

	Per Week	Per Month	Per Year
g. Auto expenses			
1. Gasoline and oil			
2. Maintenance and repairs			
3. Loan payments or rental			
4. Registration			
5. Insurance			
6. Depreciation			
7. Parking and tolls			
h. Other transportation expenses			
1. Commutation			
2. Taxis and buses			
3. Other			
i. Child care expenses			
1. Lunch money			
2. Allowances			
3. Babysitter			
4. Child grooming			
5. Summer camp			
6. Religious education			
7. Tutoring			
8. Lessons (music, dancing, etc.)			
9. Pet expense			
10. Education expense			
j. Personal expenses			
1. Tobacco			
2. Grooming			
3. Cosmetics			
4. Lunches out			
5. Entertainment (includes dinners out)			
6. Vacations			
7. Club dues and expenses			
8. Religious dues and contributions			
9. Gifts and presents			
10. Hobby expense			
11. Sports expense			
12. Education expense			
13. Books, magazine, records, etc.			
14. Charitable contributions (other than religious)			
k. Business expenses			
1. Dues (union, etc.)			
2. Subscriptions, books			
3. Other unreimbursed expenses (specify)			
4. Retirement plan			
l. Other insurance			
1. Life insurance			
2. Health insurance			
3. Accidence insurance			
4. Disability insurance			
5. Other (specify)			

§ 14:3

NEW YORK MATRIMONIAL PRACTICE

	Per Week	Per Month	Per Year
m. Obligations			
1. Alimony			
2. Child support			
3. Loans (other than auto)			
4. Others (specify)			
n. Recreation expenses (not otherwise mentioned)			
1. Other real estate			
2. Boat expense			
3. Airplane expense			
o. Other expenses:			
1. Federal income taxes			
2. State income taxes			
3. City income taxes			
4. Social security payments			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			

TOTAL EXPENSES

Please assemble and bring to the office the following items:

1. All income tax returns for past five years
2. All bank books, certificates of deposit and bank statements for the past three years
3. Listing by expense category of all checks written for past two years with separate totals for each category for each year
4. Deeds to real estate
5. Loan books
6. Insurance policies
7. Retirement plan and statements
8. Recent paycheck vouchers or envelopes
9. Other _____

Chapter 16

Negotiation and Agreement

- § 16:1 Step 1. Have all pertinent information available for negotiation
- § 16:2 Step 2. When advisable, hold four-way conference
- § 16:3 Step 3. Prepare settlement agreement in accordance with understanding of parties
- § 16:3.50 Step 3.1 Determine health insurance coverage for each party
- § 16:4 Step 4. Familiarize client and then opposing counsel with proposed agreement
- § 16:5 Step 5. Prepare, serve, and distribute copies of agreement
- § 16:6 Step 6. Prepare, serve, and distribute related documents
- § 16:7 Step 7. File memorandum of separation agreement if divorce is not presently pursued

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§ 16:1 Step 1. Have all pertinent information available for negotiation

It is difficult to have a productive exchange of thoughts and proposals designed to settle a case if the attorney does not have all of the necessary information before beginning the first settlement discussion. A position may be taken in ignorance of a pertinent fact. Once taken, it may be difficult, awkward and possibly compromising to take a different position once the fact becomes known. No suggestion, for example, can be made with regard to the support allowance until all of the financial information is known—income, income potential, assets, liabilities, living standard, needs of the clients, etc. Be prepared before commencing settlement talks.

§ 16:2 Step 2. When advisable, hold four-way conference

Many experienced attorneys try to develop basic points of agreement and define issues before scheduling a so-called “four-way conference.” That is a conference of both spouses and their separate attorneys. Sometimes such a conference is necessary to close the gaps of differences between the respective positions of the parties on the issues not resolved. However, a four-way conference early in the case

§ 16:2**NEW YORK MATRIMONIAL PRACTICE**

and before the issues are defined frequently becomes an arena for the clients to ventilate their emotions and is seldom productive. Its request by an attorney is often considered as an indication of lack of experience of the attorney or lack of control of the client by the attorney. It is important that the attorney keep careful notes of the points of negotiations during the conferences. This will aid in the drafting or checking a settlement agreement. It will also provide reference material in the event of a subsequent need to interpret provisions of the agreement. The discussions, as noted in the file, will be indicative of the intent of the parties, particularly in the event that the validity or interpretation of the agreement is challenged.

§ 16:3 Step 3. Prepare settlement agreement in accordance with understanding of parties

When a "meeting of the minds" is reached, an agreement should be prepared based upon the deal that was made. Each agreement should be drafted individually based upon the understanding of the parties. No form agreement is adequate or should be used without extensive revisions and redrafting. Many of the clauses are stereotyped or "boilerplate." However, read them carefully to be sure that small changes in language do not affect the meaning of what is believed to be intended as a "standard" clause.

The settlement agreement [§ 28:1] should serve a two-fold purpose: first to resolve the present issues; and, second, to contemplate and provide for future circumstances to the extent foreseeable. It should, therefore, be a complete and comprehensive document.

The included form agreement is simply a rough guide which should be scrutinized minutely and critically in all of its clauses before any of the provisions are adopted in a particular case. It is not designed to meet the requirements of any particular case and is to be used merely as a guide. Most of the clauses will require "tailoring" to conform to the individual needs of the case involved.

§ 16:3.50 Step 3.1 Determine health insurance coverage for each party

In 2007, the New York legislature enacted Domestic Relations Law § 177 in order to assure the parties to a divorce or other dissolution of the marriage that there will be provision for the medical insurance coverage of the spouses, regardless of the party responsible for payments. A divorce agreement or settlement agreement, and most likely a postnuptial agreement, will not be valid for the purpose of resolving marital issues unless specific provisions are contained in the agreement for providing health insurance to each of the spouses and a recognition of the spouse who is to bear the expense for the insurance. A judgment of divorce or other judgment dissolving the marital status will not be entered unless and until the agreement has complied